



Risk Management

by Michael Gentile, J.D.

Police searches of guestrooms and the innkeeper's responsibilities

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In the last issue of *The Rooms Chronicle* there was a discussion of innkeepers' rights and responsibilities as they relate to entering a guest's room and potentially violating the guest's right to privacy. That article focused primarily upon the conditions that must occur before an innkeeper may enter a guest's room and what can happen with information supporting an illegal activity obtained, once inside that room. This article will examine the innkeeper's role in cases where illegal activity was discovered and subsequently reported to the police.

Consent for police searches

First, we will assume for this discussion that in any case where illegal activity was discovered and the police are summoned, the innkeeper had entered the guestroom under any legal basis (e.g., maintenance, housekeeping, imminent danger, non-payment) that was discussed in the previous issue. Once inside, the innkeeper or an employee discovers what appears to be evidence of illegal activity, and as a result the police are called in. Once the police arrive and are apprised of the situation they will ask for consent to enter and search the room.

For consent to be valid it must be given by a person authorized to give it. In these cases, the person authorized to consent to a search of a guestroom is the guest. If consent is given by the hotel manager and the search by police turns up evidence that supports that illegal activity has occurred, that search would most likely be found to be invalid in subsequent legal proceedings and whatever evidence was discovered would be "suppressed" in that case as being "fruit" of an unlawful search. This scenario is an example of an application of the Fourth Amendment and the Exclusionary Rule that was also described in the previous article.

Search warrants

The next question becomes, without consent from the guest, how do police in this scenario lawfully search a guestroom where evidence was discovered by hotel personnel? They obtain a search warrant. While this may sound simple, it can be time consuming. It also will involve the cooperation of the innkeeper and the staff members who made the discovery. A search warrant must be obtained from a judge authorizing police to make a specific search in a specified area. For a search warrant to be issued, a judge must be shown "probable cause" that evidence of a crime will be revealed. Probable cause means facts sufficient for a reasonable person to believe evidence of a crime is located in the specific area that police want to search, in this case the guestroom.

This is where the hotel staff and the innkeeper come in. They must be able to provide credible and reliable information that they first entered the guestroom for a lawful purpose and then, they observed specific items in specific locations within the room. Once armed with that information, the police can then make their case for a warrant. Once a valid search warrant is obtained and the subsequent search reveals the evidence in question, that evidence is likely to withstand any legal challenges as to how it was obtained.

Warrantless searches

Keep in mind that the consent requirement only applies when there is no other valid reason to enter the room. There are cases that have held that if police are called because guests are breaking things in their room or that guests are engaging

in activities that are disturbing other guests, the police may enter upon the request of the innkeeper. In those situations, any evidence “in plain view” upon entry may be admissible in a subsequent legal proceeding.

If the action is occurring and continuing, entry without consent may be lawful. Additionally, a guest’s right to privacy terminates and there is no need for consent when their occupancy terminates. Termination is typically triggered after a guest checks out of the hotel or after the check-out hour on the scheduled day of departure has passed. Therefore, after events that trigger termination of occupancy (e.g., check-out, non-payment, etc.), warrantless searches are permissible.

Innkeeper liability and cooperation

After all is said and done, suppose it was determined that an unlawful search had occurred. Is the innkeeper responsible for the result? The answer is generally “no”. If police do not obtain consent from the guest and instead act upon the consent of the innkeeper in executing a search, it is the actions of the police that are unlawful.

If the police arrive on premises, no staff person should ever refuse the request of a police officer. The law will encourage one to cooperate and will not make a property responsible for the actions of a police officer. The innkeeper and staff do have, however, an ongoing responsibility not to violate the guest’s right to privacy. Included in that would be the responsibility to give credible and accurate information to support police actions. The property could be civilly liable for a guest’s loss if their initial actions constitute a violation of the guest’s right to privacy.

As an innkeeper, the best way stay within the law is to be aware of the guest’s right to privacy, be prudent when summoning police, be positive of the information provided, and always cooperate to the fullest extent possible. ✧

(Michael Gentile, J.D. is an attorney and associate professor of recreation and sports management at Niagara University. As an attorney, he specialized in personal injury and administrative law and is the former law director for the city of Sandusky, Ohio. E-mail: mgentile@niagara.edu.)